

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

April 21, 2011

Board of Land
and Natural Resources
Honolulu, Hawaii

Amend Prior Board Action to Correct the UH Match Amount (\$128,430) in
February 25, 2011, Item F-2: Request for Approval to Add Federal Funding (\$385,291) and
Extend through FY12 the Department of Land and Natural Resources (DLNR)/University of
Hawaii (UH) Contract No. 55137 for the Project Titled Evaluating the Effectiveness of
Restricted Fishing Areas for Improving the Bottomfish Fishery

Background:

The Land Board at its meeting of February 25, 2011, under agenda Item F-2, approved recommendations authorizing the Chairperson to negotiate and, subject to necessary approvals, amend/extend Contract No. 55137 with the University of Hawaii. The original submittal incorrectly stated that the UH would provide the required matching funds of \$136,130, when the correct match figure was actually \$128,430.

This submittal is to correct the match amount. Due to higher internal costs, the UH will only be able to provide the minimum required grant match of 25% of the total contract amount, i.e., \$128,430, towards the U.S. Fish and Wildlife Service Sport Fish Restoration grant funding the contract. With the federal funding amount of \$385,291 and the corrected UH matching funds amount of \$128,430, the rounded total project amount would be \$513,721. The contract amount and all other information in the February 25, 2011 submittal remain the same.

Chapter 343 – Compliance with Environmental Law:

Contract No. 55137 involves the use of state lands (submerged lands zoned in the Conservation District, Resource subzone) and approval for use of state funds. See Agency's Declaration of Exemption (attached) from preparation of an environmental assessment. A Declaration of Exemption was prepared for Dr. Donald Kobayashi with the Pacific Islands Regional Science Center, National Marine Fisheries Service, Special Activity Permit 2011-54 for bottomfish research, and approved by BLNR at its February 25, 2011 meeting. Dr. Drazen's work is covered under this Permit. As the state funds encumbered through this revised UH matching amount for Contract No. 55137 only represent another trigger for environmental analysis of contemplated activities under Dr. Kobayashi's special activity permit, the same exemption analysis should apply.

RECOMMENDATION:

"That the Board amend the prior Board Action of February 25, 2011, Agenda Item F-2, to reflect the change in grant match provided by the UH from \$136,130 to \$128,430.

That the Board also recognize and adopt DLNR's prior Declaration of Exemption prepared for Dr. Donald Kobayashi's special activity permit no. 2011-54, because this anticipated usage of state funds of the University of Hawaii in Contract No. 55137 applies to and coincides with the prior exemption analysis of the same contemplated activities for purposes of compliance with chapter 343, HRS."

Respectfully submitted,



FRANCIS G. OISHI
Program Manager

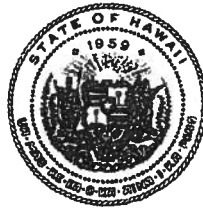
APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson

Attachment

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES
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February 25, 2011

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
INTERIM DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

TO: Division of Aquatic Resources File

THROUGH: William J. Aila, Jr., Interim Chairperson

FROM: Robert Nishimoto, Aquatic Biologist
Division of Aquatic Resources *JO for RN*

SUBJECT: Declaration of Exemption from the Preparation of an Environmental Assessment under the Authority of Chapter 343, HRS, and Chapter 11-200, HAR, for a Special Activity Permit to Dr. Donald R. Kobayashi, Pacific Islands Fisheries Science Center, NOAA, for studies on Hawaii State deep-seven bottomfish and jacks.

The following permitted activities are found to be exempted from preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR:

Project Title: Special Activity Permit to Dr. Donald R. Kobayashi, Pacific Islands Fisheries Science Center, NOAA, for studies on Hawaii State deep-seven bottomfish and jacks.

Permit Number: SAP 2011-054.

Project Description: The research permit, as described below, would allow up to 500 takes of all seven species of State regulated deep-seven bottomfish, including within bottomfish restricted fishing areas (BRFAs), and 20 each of three species of jacks. There are three parts of the study – 1) to gather life history data on age, growth, abundance, spawning and size at maturity, 2) to gather data on incidentally caught species of the deep slope bottomfish ecosystem habitat to understand their population structure and the predator/prey relationship with juvenile bottomfish, including sampling the stomach content of potential predators of juvenile bottomfish, and 3) tag and release viable adult specimens that are not exhibiting signs of barotrauma or subsequently sampled for stomach contents, if external tags are available. The permit would allow the continuation of research activities even after the annual closure of the bottomfish fishing year has been declared. This is needed to continue to gather data on the deep-7 bottomfish throughout the life cycle of the regulated species throughout the year. The fishery is currently one of the most heavily regulated fisheries being managed under a Total Allowable Catch limit, bag limits, closed areas, and gear restrictions.

Consulted Parties: Not applicable.

Exemption Determination: After reviewing HAR § 11-200-8, including the criteria used to determine significance under HAR § 11-200-12, DLNR has concluded that the activities under this permit would have minimal or no significant effect on the environment and that issuance of the permit is categorically exempt from the requirement to prepare an environmental assessment based on the following analysis:

1. All activities associated with this permit have been evaluated as a single action. Since this permit involves an activity that is precedent to a later planned activity, i.e the collection of field data throughout the permit period, the categorical exemption determination here will treat all planned activities as a single action under § 11-200-7, HAR.

2. The Exemption Class for Scientific Research with no Serious or Major Environmental Disturbance Appears to Apply. HAR § 11-200-8.A.5. exempts the class of actions which involve "basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource." This exemption class has been interpreted to include the research on animals, such as those being proposed.

In addition, the activities under consideration are exempt under Exemption Class #5, Exempt Items #3, #4, and #5, respectively, which include "placing recording devices in the field to determine animal movement," as well as "wildlife and game surveys, censuses, inventories, studies..." and "...marine surveys and research activities..." Department of Land and Natural Resources, Exemption List for the Division of Fish and Game, approved January 19, 1976.

The proposed acoustic monitoring activities here appear to fall squarely under the exemption class identified under HAR § 11-200-8.A.5. and as described under the 1976 exemption list class items. As discussed below, no significant disturbance to any environmental resource is anticipated. Thus, so long as the below considerations are met, an exemption class should include the action now contemplated.

3. Cumulative Impacts of Actions in the Same Place and Impacts with Respect to the Potentially Particularly Sensitive Environment Will Not be Significant. Even where a categorical exemption appears to include a proposed action, the action cannot be declared exempt if "the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment." HAR § 11-200-8.B. To gauge whether a significant impact or effect is probable, an exempting agency must consider every phase of a proposed action, any expected primary and secondary consequences, the long-term and short-term effects of the action, the overall and cumulative effect of the action, and the sum effects of an action on the quality of the environment. HAR § 11-200-12.

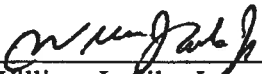
Significant cumulative impacts are not anticipated as a result of this activity, and numerous safeguards further ensure that the potentially sensitive environment of the project area will not be significantly affected. All activities will be conducted in a manner that does not diminish marine resources, qualities, and ecological integrity, or have any indirect, secondary, cultural, or cumulative effects.

Since no significant cumulative impacts or significant impacts with respect to any particularly sensitive aspect of the project area are anticipated, the categorical exemptions identified above should remain applicable.

4. Overall Impacts will Probably have a Minimal or No Significant Effect on the Environment.

Any foreseeable impacts from the proposed activity will probably be minimal, and further mitigated by general and specific conditions attached to the permit. Specifically, all research activities covered by this permit will be carried out with strict safeguards for the natural, historic, and cultural resources, other applicable law and agency policies and standard operating procedures.

Conclusion. Upon consideration of the permit to be approved by the Chairperson, being delegated signatory authority on behalf of the Board of Land and Natural Resources at its meeting of October 24, 2008, the potential effects of the above listed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, have been determined to be of probable minimal or no significant effect on the environment and exempt from the preparation of an environmental assessment.



William J. Aila, Jr.
Interim Chairperson,
Board of Land and Natural Resources

2/25/11

Date